

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:04cr297

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
JORGE ANTONIO MOLINA MARTINEZ,	)	
	)	
Defendant.	)	
_____	)	

**THIS MATTER** is before the Court on the defendant's Amendment (One) Petition to the Government for Redress of Grievances. (Doc. No. 67).

It appears that the defendant is seeking to vindicate his right under the First Amendment to petition the government for redress of grievances. He complains, pursuant to 18 U.S.C. § 3231, that the Court lacked jurisdiction over the offense with which he was charged; therefore, the judgment against him should be dismissed as void. (Doc. No. 67: Petition at 2). The defendant fails, however, to identify a valid procedural vehicle to bring his claim before the Court.

If the petition had been filed within seven days of the jury's verdict returned on August 30, 2005 (Doc. No. 41), the Court could have considered whether to arrest the judgment for lack of jurisdiction under Rule 34 of the Federal Rules of Criminal Procedure. See e.g. United States v. Mendoza, 957 F. Supp. 1155, 1159 (E.D. Ca. 1997) (timely Rule 34 motion proper to remedy alleged jurisdictional defect). Additionally, 28 U.S.C. § 2255 allows a federal prisoner to raise a jurisdictional or constitutional challenge to his sentence. Yet, the defendant specifically

requested that his petition not be considered under § 2255 based on an inaccurate understanding that his claim would be decided by a magistrate judge, rather than an Article III judge.<sup>1</sup> Accordingly, the Court finds that the defendant has failed to show that the Court has jurisdiction to consider his complaint as presently filed.

If the defendant chooses to seek review of his sentence under § 2255, it must be filed within one-year limitations period. The Fourth Circuit affirmed the defendant's sentence on May 7, 2007. The judgment became final on August 6, 2007, when he did not seek review by the Supreme Court. United States v. Sosa, 364 F.3d 507, 509 (4th Cir. 2004). Thus, he must file his § 2255 petition on or before August 6, 2008, unless another provision of 28 U.S.C. § 2255(f) applies.

**IT IS, THEREFORE, ORDERED** that the defendant's Amendment (One) Petition to the Government for Redress of Grievances is **DISMISSED**.

The Clerk is directed to send § 2255 forms along with a copy of this Order to Jorge Antonio Molina Martinez, USM No. 20162-058, Federal Correctional Institution, P.O. Box 5000, Oakdale, Louisiana 71463.

Signed: July 13, 2008



Robert J. Conrad, Jr.  
Chief United States District Judge



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<sup>1</sup>This Court does not refer § 2255 cases to a magistrate judge.